

REMARKS

Claims 25-58 are pending. Claims 29-32 and 36-58 have been withdrawn from consideration by the Office as being directed to non-elected subject matter. Claims 25-28 and 33-35 have been examined.

Claim 1 has been amended to recite that the foam is a “stable” foam. Support for this amendment can be found at page 10 wherein the uses of the material, *inter alia*, covering sensitive surfaces of reaction tanks, necessitates that the foams be “stable.”

REJECTION UNDER 35 U.S.C. § 102(b) or alternatively 35 U.S.C. § 103(a)

Claims 25, 26, 28, 33, and 34 have been rejected under 35 U.S.C. § 102(b), as allegedly being anticipated by U.S. 5,419,487 issued to Nielsen *et al.* (hereinafter “Nielsen”) or alternatively, as allegedly obvious over Nielsen. Applicants respectfully disagree.

The Office Action states that “Nielsen’s invention relates to a water-borne coating composition (K1) and a compressed fluid dispersed therein (K2). The water-borne coating composition contains a water-soluble polymer (liquid state of matter) [col. 6, ll. 46]. The compressed fluid is a supercritical fluid compressed fluid, such as ethane [col. 1, ll. 7-13]. The liquid compressed fluid phase is finely dispersed into the liquid mixture. Forming and maintaining the finely dispersed liquid compressed fluid phase (pools) in the liquid mixture may be aided by using a surfactant (K3) [col. 17, ll. 22-44]...Nielsen teaches in the Background section that it is known that upon decompression to a subcritical state, the compressed fluid expands and becomes a gas [col. 2, ll. 39-41. Since the expanded gas is enclosed and interfaced with the water-borne coating composition via the surfactant, it is inherently a foamed material.”

Claim 25 as amended recites a “stable foam.” The foam that the Office Action asserts is formed when the water-borne compositions of Nielsen are sprayed is **not a stable foam**. The compositions of Nielsen explosively expand such that the expanding gas drives the aqueous phase out of the spray tank and onto a surface. There is no way to stop the expansion of Nielsen’s compositions and to thus form a stabilized foam. In addition, the composition of Nielsen’s foam, unlike Applicants’ foam, could not solidify if the expansion could be halted; it is intended to be a liquid at room temperature. Therefore, the transient foam that the Office Action

asserts is disclosed by Nielsen, cannot be a stable foam, and, as such, does not anticipate the stable foam recited in Claim 25.

As it relates to the issue of obviousness, the artisan of ordinary skill seeking to provide a stabilized foam material would not turn to the disclosure of Nielsen because Nielsen's end product is not a stabilized foam, but, instead, a propellant (compressed fluid) delivered composition for use in delivering a liquid composition to a surface. There is no disclosure in Nielsen that would lead the artisan to make the requisite changes to the disclosed compositions of Nielsen that would result in a stabilized (solid) foam material. Therefore, the Claims are not obvious in view of Nielsen.

Applicants respectfully request reconsideration and withdrawal of this rejection 35 U.S.C. § 102(b) or alternatively 35 U.S.C. § 103(a).

REJECTION UNDER 35 U.S.C. § 103(a)

The Office Action has rejected Claim 35 under 35 U.S.C. § 103(a), as allegedly obvious over Nielsen in view of U.S. 2005/0163924 (hereinafter "Anderson"). Applicants respectfully disagree.

The Office Action again concedes "Nielsen is silent about the composition of surfactant as octadethylene glycol monododecyl ether. However, Anderson's invention relates to various well known functionally equivalent surfactants." Nielsen does not disclose Applicants' recited surfactant, therefore, the Office Action has relied upon Anderson to teach the combination of a surfactant and the composition recited in Claim 25. In asserting a case of obviousness the Office Action states:

It would have [been] an obvious substitution to one of ordinary skill in the art to use a well known alternative surfactant such as octaethylene glycol monododecyl ether, because the selection of a known equivalent material based on its suitability for its intended use supported a *prima facie* obviousness determination. See MPEP § 2144.07.

Anderson discloses “surfactant mediated metal oxide (SMM) films of the invention are generally made by coating a SMM precursor composition onto a substrate, evaporating the solvent to form a thin metal oxide-surfactant film, and removing the surfactant.” (See paragraph [0015].)

Anderson cannot be used as a reference because it in no way relates to the subject matter recited in Applicants’ claims. The reasons that Anderson would select a surfactant for use in his compositions, is wholly different from the reasons that the Applicants would select a surfactant. Applicants do not remove their surfactant; however, Anderson does. As such, any teaching found in Anderson would relate to selecting a surfactant that can be removed. In addition, the compositions disclosed by Anderson are not foams, they do not comprise a supercritical fluid, and they comprise metal oxides which Applicants’ foams do not.

The stable foam recited in Claim 25 is obtained by a mild extension in order to obtain a foam (rather than disrupting the foam). This is accomplished above the critical point of the liquid-gas mixture, which is the reason that gas and liquid are non-distinguishable. As such, Nielsen does not teach any measure of how to obtain a stable foam as recited in Claim 35 because this would require disclosing a completely different production process than that disclosed by Nielsen. Therefore, the disclosure of Nielsen in combination with Anderson does not render Claim 35 obvious. Applicants respectfully request reconsideration and withdrawal of the rejections under 35 U.S.C. § 103(a).

CONCLUSION

Pursuant to the above Remarks, reconsideration and allowance of the pending application is believed to be warranted. The Examiner is invited and encouraged to directly contact the undersigned if such contact may enhance the efficient prosecution of this application to issue.

A credit card payment submitted *via* EFS Web in the amount of \$960.00 is enclosed herewith. This fee includes the \$405.00 fee under 37 C.F.R. § 1.17(e) for the Request for Continued Examination (Small Entity) and the \$555.00 fee under 37 C.F.R. § 1.17(a)(3) for the Three-Month Extension of Time (Small Entity). No further fees are believed to be due; however,

ATTORNEY DOCKET NO. 04156.0016U1
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the Commissioner is hereby authorized to charge any fees which may be required or credit any overpayment to Deposit Account No. 14-0629.

Respectfully submitted,

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Name of Person Signing (Print/Type)	Richard S. Echler		
Signature	/ Richard S. Echler/	Date	October 20, 2009